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No. 84-181

In The
Supreme Court of the United States
October Term, 1984

SUPERIOR WEST SIXTH CORPORATION,
Petitioner,

vs.

CUYAHOGA COUNTY BOARD OF REVISION, ET AL.,
Respondents.

On Writ of Certiorari to the Supreme Court of Ohio

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Chapter 5715 of the Ohio Revised Code establishes a Board of Revision ("Board") in each county of the State of Ohio, with authority to hear and decide complaints against the County Auditor's valuation of real property for taxation. Pursuant to R.C. 5715.19, the Cleveland Board of Education filed complaints for tax years 1978 and 1979 against the property owned by Petitioner.

The Board, pursuant to notice, conducted an evidentiary hearing and considered the testimony of expert witnesses presented by the parties. The Board made separate decisions for each year complained of.

R.C. 5717.05 provides for an appeal of decisions of the Board to the Common Pleas Court, a trial court of general jurisdiction. Petitioner, dissatisfied with the Board's decisions, attempted to appeal to the Common Pleas Court by filing a single Notice of Appeal combining both decisions of the Board.

Subsequently the School Board moved to dismiss the appeal on the basis that petitioner had failed to comply with the requirement R.C. 5717.05 authorizing such appeals.

The trial court sustained the Motion and dismissed the appeal. The Cuyahoga County Court of Appeals upheld the trial court. The Ohio Supreme Court dismissed the appeal taken to it, finding no substantial constitutional question existed.

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ARGUMENT

The Dismissal Of An Appeal From An Administrative Decision For Failure To Comply With Reasonable Statutory Conditions Authorizing Such Appeal Is Not A Violation Of The Due Process Clause.

Petitioner asserts that its due process and equal protection rights were denied when the trial court dismissed its appeal from an administrative decision without judicial review of the merits. The reason for the dismissal was a finding that the Petitioner had not perfected the appeal in the manner required by the statute authorizing such appeal.

The trial court applied the well-established principle of law that compliance with reasonable administrative and statutory directives may be required in order for an appeal to be heard on the merits. The Ohio Courts' judgments are in accord with decisions of this Court in *Ownbey v. Morgan,* 256 U.S. 94 (1921) and *Dodge v. Osborn,* 249 U.S. 118 (1916).

In *Tacoma v. Taxpayers of Tacoma,* 357 U.S. 320 (1958) at 366, this Court held:

> "It can hardly be doubted that Congress, acting within the Constitutional powers, may prescribe the procedures and conditions, under which, and the courts in which, judicial review of administrative orders may be had." *Tacoma, supra* 336.

Both state and federal decisions uniformly support the proposition that a failure to comply with the requirements of a statute authorizing an appeal properly results in dismissal of the appeal. See 2 Am Jur.2d *Administrative Law* § 716 and § 732; 73A C.J.S. *Public Administrative Law and Procedure* § 175.

Petitioner presents no direct challenge to the Ohio statutory scheme providing for judicial review of administrative decisions. Nor is it claimed that the due process clause requires that its appeal be heard, whether or not there was compliance with the statute.

Essentially, Petitioner's only claim is that the Ohio Courts have misconstrued their own precedents and have misapplied the Ohio statute. Petitioner asserts that the manner of taking its appeal, when judged by the requirements of the Ohio statute, was not so defective as to warrant dismissal. In support of this proposition, Petitioner

cites cases that involve appeals from different administrative agencies to different courts, or cases that interpret the Ohio Rules of Appellate Procedure. None of Petitioner's cases are directly in point. Petitioner attempts to overcome this fatal deficiency by arguing that the *in pari materia* principle of statutory construction somehow rises to a constitutional imperative.

Due process does not require that all appeals from administrative agencies be taken in the same manner. The legislature can prescribe different methods and means of appeal and remain consistent with the demands of the constitution, *Tacoma v. Taxpayers of Tacoma,* 357 U.S. 320 (1958).

The Petitioner does not present new issues of constitutional law, but rather is limited to an alleged misapplication of state law. This is not the type of case that is appropriate for this Court to review.

———o———

CONCLUSION

Rule 17 of the Rules of The Supreme Court of the United States indicates reasons for granting a Writ of Certiorari. The Rule suggests that review may be appropriate if a state court of last resort decides a federal question in a way that conflicts with the decision of another state court of last resort, or if a state court decides a federal question that has not been settled by this Court. The instant petition fails to meet either standard and the Petition For Writ of Certiorari should be denied.

Respectfully submitted,

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